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72-5241-33

Audit Of The Office Of
Economic Opportunity Grant
To Florida Rural
Legal Services, Inc.,
Pompano Beach, Florida

B-130515

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

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NOV. 18, 1971

GENERAL ACCOUNTING OFFICE AUDIT OF

1 THE OFFICE OF ECONOMIC OPPORTUNITY GRANT TO

957

2 FLORIDA RURAL LEGAL SERVICES, INC.

INTRODUCTION

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R Pursuant to congressional requests, we audited the records pertaining to a grant to Florida Rural Legal Services, Inc., for operation of a legal services program in six southern Florida counties. The grant of \$514,499 was made under section 222 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2809), by the Office of Economic Opportunity (OEO) for the period October 1, 1970, to September 30, 1971.

Florida Rural maintains law offices in Homestead, Delray Beach, Fort Myers, Pompano Beach, Belle Glade, and Immokalee, Florida. For the period April 20, 1967, to September 30, 1970, Florida Rural and its predecessor organization, South Florida Migrant Legal Services Program, Inc., received grants from OEO totaling about \$1.3 million for operating a legal services program.

The audit was made during July and August 1971 at the Homestead and Belle Glade offices of Florida Rural, OEO's Atlanta Regional Office, and OEO headquarters in Washington, D.C., and was directed toward (1) determining whether grant funds were expended in accordance with the financial conditions of the grant and the applicable OEO policies and (2) examining into statements by a Belle Glade attorney, concerning the ineligibility of a certain Florida Rural client for legal assistance and the propriety of Florida Rural attorneys' acceptance of certain legal cases for representation.

We reviewed applicable legislation, OEO policies and instructions, and the grant agreement. We also interviewed Florida Rural and OEO officials and the City Attorney for Belle Glade, Florida.

Our audit of the records of Florida Rural included an examination of the \$25,625 of expenditures incurred by the

Belle Glade office of Florida Rural for the period April 1 to June 30, 1971. Our examination also included tests of selected transactions entered into by Florida Rural's other law offices during the period October 1, 1970, to June 30, 1971. Expenditures by Florida Rural during the 9-month period ended June 30, 1971, amounted to about \$389,600. A summary of expenditures for the Belle Glade office of Florida Rural for the period April 1 to June 30, 1971, and Florida Rural's Legal Services program budget for the year ended September 30, 1971, and expenditures incurred through June 30, 1971, are listed in appendixes I and II, respectively.

Except for consideration given to the propriety of Florida Rural attorneys' acceptance of certain legal cases for representation, the scope of our audit did not include an evaluation of whether the activities of Florida Rural were being carried out in accordance with the objectives of the authorizing legislation and with OEO policies.

As of June 30, 1971, Florida Rural's personnel paid from the OEO grant included 10 lawyers, 13 secretaries, 14 investigators, a bookkeeper, a business manager, an executive director, and a deputy director. The staff also included at that time a lawyer and a law clerk whose salaries were being paid by the Reginald Heber Smith Community Lawyer Fellowship Program. Howard University Law School operates this program, which is funded by OEO at about \$5.4 million annually to recruit, train, and place young graduate lawyers in Legal Services programs throughout the country.

The staff was assisted by 13 Neighborhood Youth Center workers, a member of Volunteers in Service to America (VISTA) and a law student paid by the Law Students Civil Rights Research Council.

Although the officials of OEO, Florida Rural, and other interested parties were not given an opportunity to examine and comment formally on this report, the findings were discussed with representatives of OEO and Florida Rural.

AUDIT RESULTS

Our examination of financial transactions and internal controls revealed some deviations from OEO policies and instructions. With respect to the claims made by the Belle Glade attorney, we found that:

- Although we were unable to make a definitive determination as to the eligibility of the client, Florida Rural's acceptance of this client's case appeared questionable. OEO permits Legal Services program attorneys, under certain conditions, to handle legal cases when the financial situation of a client is nearly poor. We found, however, that the client's annual income, Florida Rural's prime factor for determining eligibility, exceeded by \$680 the income limitation established by Florida Rural for its clients.
- Florida Rural's involvement in a suit for damages filed by the same client, in our opinion, is contrary to OEO's Legal Services program guidelines which prohibit Legal Services program attorneys from providing legal advice in cases involving contingent fees when the fee is sufficient to employ private counsel.
- Florida Rural's representation of this client and other persons charged with quasi-criminal¹ acts under municipal ordinances, although not technically violating the Federal law precluding representation in criminal matters, does, in our opinion, violate the spirit and intent of the Federal law because the acts are generally considered to be criminal in nature.

These matters are discussed in detail below.

The last audit of Florida Rural by a certified public accountant (CPA) was made for the program year ended

¹All offenses not crimes or misdemeanors that are in the nature of crimes.

September 30, 1970. In his reports dated February 24, and April 5, 1971, the CPA stated that Florida Rural's accounting system and internal controls were adequate.

PERSONNEL MATTERS

We found that Florida Rural did not always adhere to (1) OEO instructions relating to starting salary limitations of new employees and to the maintenance of leave records and (2) its policy which permits severance pay to be granted only to employees who are involuntarily terminated from employment.

OEO instructions require that starting salaries of new employees paid over \$5,000 annually be limited to an increase of 20 percent over their prior salary or \$2,500, whichever is less, unless OEO approval is obtained. A similar requirement is specified in Florida Rural's administrative manual.

An examination of the personnel folders of 39 individuals employed by Florida Rural between December 1969 and June 1971 showed that eight of 23 employees for whom prior salary and starting salary data was available had received starting salaries in excess of OEO's limitation without OEO approval. The limitation on starting annual salaries for the eight employees was exceeded by \$7,211.

For the remaining 16 employees, information on prior and/or starting salaries was not on file. The personnel folders for the 16 employees showed that the annual starting salaries for six of 11 employees exceeded \$5,000, and, for the remaining five employees, the folders did not contain information on starting salaries.

Florida Rural officials stated that they were not aware of the OEO starting salary limitation; therefore, they had not given consideration to the limitation in establishing employees' starting salaries. They stated that they would recognize the salary limitation in establishing employees' starting salaries in the future.

OEO instructions require grantees to maintain records for each employee showing balances available for annual and

sick leave. We noted the following weaknesses in Florida Rural's procedures and practices relating to leave records: (1) records did not show current balances of employees' annual and sick leave, (2) leave records were not designed to readily provide leave information, and (3) leave computations contained mathematical errors. Florida Rural officials agreed to consider our suggestions on improving the preparation of leave records.

Florida Rural's administrative manual provides that an employee whose employment is terminated may be given severance pay. The executive director of Florida Rural informed us that this provision of the administrative manual does not authorize the granting of severance pay to employees who voluntarily resign.

Florida Rural's records and our discussions with its officials showed that, during the period January 1970 to July 1971, 13 employees who had voluntarily resigned from employment with Florida Rural to take jobs elsewhere were paid severance pay by Florida Rural at the time of their departure. The severance pay, which amounted to \$6,903, represented either 2 weeks' or 1 month's regular salary.

The executive director of Florida Rural stated that he had been of the opinion that Florida Rural's administrative manual contained a provision authorizing the granting of severance pay to employees who had voluntarily resigned. However, we were unable to locate the authorizing provision in our review of Florida Rural's administrative manual and discussions with the executive director. The executive director of Florida Rural informed us that Florida Rural's employees were underpaid and severance pay was granted as a bonus to departing employees for services rendered to Florida Rural. He stated that he would discontinue the practice of providing all departing employees with severance pay until a ruling was obtained from OEO on this matter.

An OEO official informed us in November 1971 that Florida Rural had requested OEO's approval to continue its practice of providing all departing employees with severance pay and that OEO had denied the request.

NON-FEDERAL CONTRIBUTIONS

Authorizing legislation generally requires a grantee to provide a specified percentage of total project costs in either cash or in-kind contributions. OEO instructions require a grantee to maintain the rate of contribution of the non-Federal share so that, throughout the grant period, Federal funds will not be used to pay for a substantially larger percentage of project costs than authorized.

The rate of non-Federal contributions for Florida Rural's legal services program is 10 percent of program costs. On the basis that program expenditures were \$389,600 through June 30, 1971, contributions from non-Federal sources should have been about \$39,000. The records showed, however, that, to June 30, 1971, non-Federal contributions amounted to about \$3,000, or about 1 percent of program costs.

The executive director of Florida Rural informed us that Florida Rural was doing the best it could to obtain the required amount of non-Federal contributions but that he believed that it would be impossible for Florida Rural to raise the required amount. An OEO official informed us that, if Florida Rural had not raised the required amount of non-Federal contributions by the end of the grant year, OEO would inquire into the matter and would either issue a waiver for the requirement or reduce the amount of Florida Rural's next OEO grant by the amount of the unmet non-Federal contributions.

ACCEPTANCE OF CERTAIN LEGAL CASES BY FLORIDA RURAL

A Belle Glade, Florida, attorney stated that the appearance of a Florida Rural attorney on behalf of a Government employee in the Municipal Court of the City of South Bay, Florida, did not meet OEO guidelines because the employee's income and net worth made her ineligible for such assistance. He stated also that the employee had filed a damage suit arising from her arrest. He stated further that after 1968 Florida Rural attorneys had appeared in municipal court in this and a number of other cases which involved criminal matters and that such legal representation should be in violation of OEO guidelines.

The attorney referred to a newspaper article which contained information on the scheduled trial of a certain VISTA worker charged with obstructing traffic and resisting arrest. The VISTA worker identified in the newspaper article was a VISTA volunteer. Authorizing legislation provides that VISTA volunteers are not Federal employees and, with certain exceptions, are not subject to the provisions of laws relating to Federal employment.

The results of our examination into these matters follow.

Eligibility of VISTA volunteer for legal services

The manager of Florida Rural's Belle Glade office informed us that the VISTA volunteer's case was handled by an attorney from his office. The VISTA volunteer was arrested in South Bay, Florida, and was charged in municipal court with obstructing traffic and resisting arrest without violence. According to the manager of the Belle Glade office, the Florida Rural attorney handling the case petitioned the municipal court to have the case transferred to the county criminal court of record and withdrew from the case upon acceptance of the petition by the municipal court judge. The charges against the volunteer were dropped by the county prior to action's being taken by the prosecuting attorney.

Financial eligibility factors

OEO's Legal Services program guidelines applicable to eligibility for legal assistance state that OEO will not provide free legal assistance for individuals who can afford to employ private counsel and that the eligibility criteria established by legal services programs should include such factors as (1) income and dependents, (2) assets and liabilities, (3) cost of a decent living in the community, and (4) an estimate of the cost of the legal services needed.

Florida Rural's grant from OEO provides that eligibility be based primarily on income with other factors, such as number of dependents, property ownership, bank accounts, and debts, being taken into consideration. The grant states, with respect to determining income eligibility, that the standard is in accord with OEO poverty guidelines.

During our review of the eligibility of the VISTA volunteer for legal services, Florida Rural attorneys would not permit us to review the VISTA volunteer's case file which contained financial information, and we did not insist on seeing these records because such action might be considered to breach the confidential nature of an attorney-client relationship.

Because necessary records were not available to us, we could not make a definitive determination of eligibility in the volunteer's case. However, information was provided to us by Florida Rural attorneys or was obtained from sources other than the case files which showed that the volunteer's income, Florida Rural's prime factor for determining eligibility, exceeded the limitation established for clients of Florida Rural.

ACTION¹ records showed that, on November 26, 1970, the VISTA volunteer involved in the case began a 1-year volunteer program. We were informed by ACTION officials that their

¹Effective July 1, 1971, the Volunteers in Service to America program was transferred from OEO to a new agency, ACTION.

records showed the volunteer to be single with no dependents. OEO's poverty guidelines establish an income limitation of \$1,900 a year for a nonfarm family of one.

During the year of VISTA service, the volunteer is to receive monthly payments from VISTA totaling \$2,580 annually, before taxes, for food, lodging, and personal expenses, or \$680 more than the income limitation established for clients of Florida Rural. The volunteer was to receive in addition to the \$2,580, a \$600 stipend readjustment allowance at the completion of her enrollment as a volunteer, a \$200 adjustment allowance at the beginning of her VISTA project assignment for such items as travel to the project and household furnishings, and \$70 at the time she took a vacation.

Florida Rural officials informed us that the volunteer had no car, house, savings account, stocks, or bonds and that the Florida Bar Association did not have a specific suggested minimum fee to represent a client for the kind of charges brought against the volunteer but that local attorneys charged about \$100 for handling traffic cases.

Nonfinancial eligibility factors

OEO's Legal Services program guidelines applicable to eligibility for legal assistance also provide that no eligibility standard should be inflexible and that an allowance should be made for the provision of assistance in cases of unusual hardship.

The manager of the Belle Glade office informed us that, although the volunteer's income exceeded the limits established for clients of Florida Rural, her case was accepted because several hundred people from the South Bay community had contacted his office requesting that he take the case to "put a stop to this sort of thing," referring to the alleged use of police force disproportionate to the need. The Chief of the Legal Services Division of OEO's Atlanta Regional Office informed us that he had discussed the volunteer's case with Florida Rural officials and had been informed that another reason for Florida Rural's acceptance of this case was that no attorney in the Belle Glade area would have accepted the case arising from the arrest of the volunteer. Florida Rural officials informed us that, except

in the City of Miami, there was no public defender or court-appointed attorney to represent persons charged in Florida municipal courts.

We discussed the eligibility of the volunteer for legal assistance with OEO officials who informed us that it was OEO policy to permit Legal Services program attorneys to handle legal cases when the financial situation of a client was nearly poor if mitigating reasons for accepting such cases existed. They informed us that cases which are concerned with major interests of the community poverty population and situations wherein applicants for legal assistance have no recourse under the law because private attorneys would not accept their cases are examples of mitigating reasons.

The Director of OEO's Legal Services Operations Division informed us that, in his opinion, although mitigating reasons for accepting the VISTA volunteer's case existed (the reaction of the community and the refusal of private attorneys to accept the case), the extent to which the income of the volunteer exceeded the annual income limitation established for clients of Florida Rural, made the eligibility of the volunteer for legal assistance a borderline case. He informed us that the need for adequate justification of client eligibility would be brought to the attention of Florida Rural officials.

Damage suit filed by VISTA volunteer

The manager of Florida Rural's Belle Glade office confirmed that, as a result of the arrest action, the VISTA volunteer had filed a suit in the Federal district court charging the arresting officers with violation of her civil rights and seeking damages in excess of \$10,000. He stated that a private attorney engaged by the VISTA volunteer and a Florida Rural attorney had signed the brief filed in the case arising from the suit as attorneys for the plaintiff.

OEO's Legal Services program guidelines state that legal services programs should not provide free legal advice in cases involving contingent fees when the fee is sufficient to retain an attorney. The guidelines state that, when a contingent-fee case involves a fee sufficient to employ competent private counsel, the client should be referred under an appropriate lawyer referral system and that, if the fee is not sufficient to attract a private lawyer, the client may be eligible for assistance.

The manager of the Belle Glade office informed us that the private attorney was handling the damages aspect of the suit filed in Federal court under a standard contingent-fee arrangement. He stated that the private attorney could not handle all aspects of the case because he was located in Gainesville, Florida, and that it would, therefore, be very difficult for him to do all the fieldwork necessary for presentation of the case. The manager of the Belle Glade office stated that he had contacted three attorneys and that all three attorneys had declined to accept the case.

The manager of the Belle Glade office informed us in August 1971 that, at that time, the private attorney was attempting to settle the case before it came to trial and that, if that effort were unsuccessful, the private attorney and the Florida Rural attorney would appear at the trial.

Although Florida Rural has not entered into a contingent-fee arrangement with respect to the damage suit, we believe that the handling of the case by a private attorney on a contingent-fee basis makes Florida Rural's involvement in the case contrary to OEO's Legal Services program guidelines which prohibit Legal Services program

attorneys from providing legal advice in cases involving contingent fees when the fee is sufficient to employ private counsel.

It should be noted, with respect to Florida Rural's involvement in the damage suit case, that the eligibility of the volunteer for legal assistance from Florida Rural attorneys also appeared questionable, as discussed previously, because of her income.

Florida Rural representation
in criminal cases

The Belle Glade attorney claimed that the appearance by a Florida Rural attorney in the Municipal Court of the City of South Bay on behalf of the VISTA volunteer does not meet OEO guidelines because OEO is not supposed to appear in criminal matters after the indictment or information¹ and that, in Florida municipal courts, the trial is based on arrest warrants and affidavits which take the place of the indictment and information. He stated that Florida Rural attorneys had appeared in 373 cases in municipal court after 1968 and that such legal representation should be in violation of OEO guidelines.

Section 222(a)(3) of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2809), provides for a Legal Services program. This section states, in part, that:

"No funds or personnel made available for such program (whether conducted pursuant to this section or any other section in this part) shall be utilized for the defense of any person indicted (or proceeded against by information) for the commission of a crime, except in extraordinary circumstances where, after consultation with the court having jurisdiction, the Director has determined that adequate legal assistance will not be available for an indigent defendant unless such services are made available."

As previously discussed, the VISTA volunteer was arrested and charged in municipal court with obstructing traffic and resisting arrest without violence. Florida Rural records and a discussion with the manager of the Belle Glade office showed that, of the 2,033 cases handled by the program during the 6-month period October 1, 1970, to March 31, 1971, about 200 cases involved Florida Rural attorneys' representation of persons charged in municipal courts in cases

¹An accusation in the nature of an indictment presented by a competent public officer.

described by the Belle Glade office manager as quasi-criminal. We noted that, among the 200 cases, 86 were handled by Florida Rural attorneys in the Belle Glade office.

In 1969, pursuant to a congressional request, the General Accounting Office examined into certain aspects of the operations of Florida Rural's predecessor organization, South Florida Migrant Legal Services Program, Inc., including the representation of persons charged in municipal courts in cases described as quasi-criminal.

In our report dated November 19, 1969 (B-130515), on the South Florida Migrant Legal Services Program, we reported that program attorneys, primarily in the Belle Glade office, had provided assistance to about 250 persons charged with quasi-criminal acts under municipal ordinances, including cases where persons had been charged with such matters as assault with a deadly weapon, assault and battery, carrying concealed weapons, prostitution, illegal sale of alcohol, and escape from custody to avoid arrest. We reported also that, in the cases handled by the program attorneys and described as quasi-criminal, the procedures had been based on municipal ordinances and that, under Florida practice, violations of municipal ordinances were not considered to be crimes.

We concluded that, in view of this Florida practice, representation by program attorneys did not technically violate section 222(a)(3) because, as a matter of law, the clients represented were not indicted or proceeded against by information for the commission of a crime. We expressed the view, however, that such representation violated the spirit and intent of the statutory provision precluding representation in criminal matters in those cases involving charges associated with matters generally considered to be criminal in nature.

The manager of the Belle Glade office informed us that the cases presently being handled by Florida Rural in municipal court were the same types of cases as those handled in 1969. Florida Rural officials informed us that their representation of persons being tried in municipal courts on charges described as quasi-criminal was justified because such cases were, by law, not classed as criminal cases and because, except in the City of Miami, there was no public

defender or court-appointed attorney to represent persons charged in the municipal courts. Information furnished to us by the City Attorney for the City of Belle Glade shows that the municipal court for that city does not provide court-appointed attorneys for indigent defendants.

Subsequent to our 1969 review, the Florida statutes were amended, effective July 1, 1970, to provide that a person charged with a violation of a county or municipal ordinance for which no jury trial is provided, when the violation is also a violation of State law, may cause the transfer of the case to the appropriate court in which a jury trial is provided. (See chapter 70-372, Florida Statutes, Senate Bill No. 288.) Under this law the Legal Services attorneys could represent a client not incarcerated until the prosecuting attorney files charges on behalf of the State or files a no-true bill.¹ Under these procedures there would be no technical violation of the criminal representation preclusion of the act until such time as the prosecuting attorney had acted.

The circumstances existing at the present time, however, are the same as those existing at the time of our 1969 review in terms of both the nature of the cases being handled and the substantive, as opposed to the procedural, provisions of the governing statutes. Therefore, our conclusion as to the propriety of Florida Rural representation of the VISTA volunteer in the case arising from the arrest and of other persons charged with quasi-criminal acts under municipal ordinances is the same now as it was in 1969--although such representations do not technically violate section 222(a)(3) of the act, they do violate the spirit and intent of the Federal law because the acts are generally considered to be criminal in nature.

¹Not a true bill of indictment because the accusation was found to be without basis.

APPENDIX I

SUMMARY OF EXPENDITURES FOR BELLE GLADE OFFICE

FLORIDA RURAL LEGAL SERVICES

FOR THE PERIOD APRIL 1 TO JUNE 30, 1971

<u>Expense category</u>	<u>Expenditures</u>
Salaries and related costs	\$17,898
Travel	1,792
Space costs	1,160
Supplies	886
Rental, lease, and purchase of equipment	273
Other costs:	
Telephone	1,665
Court costs	936
Law books	953
County-City licenses and dues	<u>62</u>
Total	<u>\$25,625</u>

FLORIDA RURAL LEGAL SERVICES PROGRAM BUDGET

FOR YEAR ENDED SEPTEMBER 30, 1971

AND EXPENDITURES INCURRED THROUGH JUNE 30, 1971

<u>Expense category</u>	<u>Program budget 10/1/70 to 9/30/71</u>		<u>Expenditures 10/1/70 to 6/30/71</u>	
	<u>Federal</u>	<u>Non- Federal</u>	<u>Federal</u>	<u>Non- Federal</u>
Salaries and related costs	\$374,280	\$54,170	\$278,424	\$3,000
Consultant and contract services	11,272	-	8,074	-
Travel	34,415	-	23,211	-
Space costs	23,100	-	19,640	-
Supplies	14,500	-	10,318	-
Rental, lease, and purchase of equipment	10,452	-	4,889	-
Other costs	<u>46,480</u>	<u>-</u>	<u>42,081^a</u>	<u>-</u>
Total	<u>514,499</u>	<u>54,170</u>	<u>386,637</u>	<u>3,000</u>
Total Federal and Non-Federal	<u>\$568,669</u>		<u>\$389,637</u>	

^aIncludes, among other things, \$21,321 for telephone, \$7,194 for law books and subscriptions, and \$4,986 for filing fees and court costs.



THE POSTMASTER GENERAL
Washington, DC 20260

August 20, 1975

Mr. Victor L. Lowe
Director, General
Government Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Lowe:

Your proposed report correctly reflects the quality of mail service in New Mexico during the year ending January 3, 1975, the period covered by the report.

As the report notes, the Service has been taking measures to improve service and the Albuquerque District's service performance since January 3 does show an improvement in the percentages of destinating mail achieving targeted delivery:

	Quarter I CY 75	Quarter II CY 75
Overnight	96	95
Second-Day	85	85
Third-Day	65	86

It should also be noted that our Service Improvement Program has advanced some mail arrivals ten to twelve hours, thereby creating the potential for upgrading a significant amount of mail from three day service to two day service.

We appreciate your affording us an opportunity to comment on this fair and objective report.

Sincerely,


Benjamin F. Bailar

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was of poor quality